



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,643	08/25/2003	Sean Phillips	515858-2008	2510

7590 07/02/2004

FROMMER LAWRENCE & HAUG LLP  
745 FIFTH AVENUE  
NEW YORK, NY 10151

EXAMINER

FLANDRO, RYAN M

ART UNIT	PAPER NUMBER
----------	--------------

3679

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/647,643

Applicant(s)

PHILLIPS ET AL.

Examiner

Ryan M Flandro

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 32-43, 56, 57, 59, 60 and 62 is/are pending in the application.
- 4a) Of the above claim(s) 32-43, 59 and 60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56, 57 and 62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20030825
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of group II, claims 56, 57 and 60 in the reply filed on 05 April 2004 is acknowledged. The traversal is on the ground(s) that search and examination of the entire application can be made without serious burden, that failure to examine accordingly presents "extreme prejudice to Applicants," and that the restriction results in "inefficiencies and unnecessary expenditures by Applicants and the PTO".

This is not found persuasive because, as pointed out by the previous Examiner, the invention recited in group II has separate utility such as for releasably securing any two structural elements together which may or may not be included in a patient support device (as recited in the claim of group I). As such, the same search will not be necessary or required for both inventions and will result in a serious burden on the Examiner. Moreover, Applicant's argument that "it is evident that there is unity of invention and allowable subject matter in the pending claims" is not deemed as relevant to the instant application because such application was not filed under 35 U.S.C. § 371. That is, unity of invention is not relevant to the restriction requirement at issue here.

Claims 32-43, 59 and 60 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. For the aforementioned reasons, the requirement is still deemed proper and is therefore made **FINAL**.

***Priority***

2. It is noted that this application appears to claim subject matter disclosed in prior Application No. 09/741,296, filed 12/19/2000. A reference to the prior application must be inserted as the first sentence of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e) or 120. See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. Also, the current status of all nonprovisional parent applications referenced should be included.

If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable

Art Unit: 3679

petition to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

### ***Information Disclosure Statement***

3. The information disclosure statement filed 08/25/03 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the foreign references referred to therein have not been considered.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

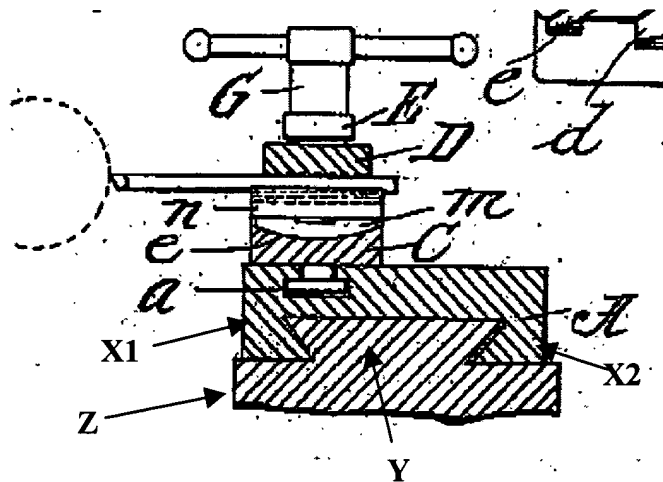
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3679

5. Claims 56, 57 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Norman (US 979,903).

- a. Claim 56. Van Norman shows and discloses a lock member comprising an upper portion **C** including means **D** for adjustably engaging a positional engagement means of a side block *n or m*; and a lower portion **A** including means **X1,X2** for adjustably engaging at least one elongated track **Y** on either side of a center portion of a base **Z**, wherein a direction of adjustment for the upper portion engaging means **D** is independent of a direction of adjustment for the lower portion engaging means **X1,X2** (see annotated figure 4 below and columns 1-4).



ANNOTATED FIGURE 4

- b. Claim 57. Van Norman further shows the engaging means **D** of the upper portion **C** enables the side block *n or m* to be adjusted longitudinally (via post **B** in track *a*) and rotationally (around post **B** – see column 2 lines 70-85), and the engaging means **X1,X2** of the lower portion **A** enables the side block *n or m* to be adjusted laterally (see annotated figure 4 above).

Art Unit: 3679

c. Claim 62. Van Norman shows and discloses a lock member comprising an upper portion **C** including an upper device **B** for adjustably engaging an elongated slot **a** of a side block **A**; and a lower portion (lower part of **A**) including a lower device **X1,X2** for adjustably engaging at least one elongated track **Y** on either side of a center portion of a base **Z**, wherein a direction of adjustment for the upper device **B** is independent of a direction of adjustment for the lower device **X1,X2** (see annotated figure 4 above).


*Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan M Flandro whose telephone number is (703) 305-6952. The examiner can normally be reached on 8:30am - 5:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMF  
June 22, 2004

  
**GREGORY J. BINDA**  
**PRIMARY EXAMINER**